

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF SOUTH CAROLINA  
 FLORENCE DIVISION

|                               |   |                            |
|-------------------------------|---|----------------------------|
| DERRICK SMITH,                | ) | C.A. No. 4:04-1327-TLW     |
|                               | ) |                            |
| Plaintiff,                    | ) |                            |
|                               | ) |                            |
| vs.                           | ) | <b>WRITTEN OPINION AND</b> |
|                               | ) | <b>ORDER</b>               |
| CITY OF MARION, BOBBY GERALD, | ) |                            |
| BOBBY DAVIS, JERRY MITCHELL,  | ) |                            |
| MICHAEL BAKER, FRANK HART,    | ) |                            |
| RALPH ATKINSON, RONALD        | ) |                            |
| ATKINSON, FRAIZER WALPOH,     | ) |                            |
| CLYDE JAMES, JAMES EQUIPMENT  | ) |                            |
| WRECKER SERVICE AND JOHN      | ) |                            |
| FINNY,                        | ) |                            |
|                               | ) |                            |
| Defendants.                   | ) |                            |
|                               | ) |                            |
|                               | ) |                            |

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On April 28, 2004, the plaintiff initiated the instant action pursuant to 42 U.S.C. §1983 alleging the towing of his truck and trailer violated his constitutional rights. The defendants deny these allegations. Defendants Clyde James and James Equipment Wrecker Service filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The remaining defendants filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. The plaintiff opposes both motions.

This matter now comes before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Thomas E. Rogers, III, to whom this case had previously been assigned. In his Report, Magistrate Judge Rogers recommends the Rule 12(b)(6) motion to dismiss filed by Defendants Clyde James and

James Equipment Wrecker Service be granted. Additionally, Magistrate Judge Rogers also recommends the Rule 56 summary judgment motion filed by Defendants City of Marion, Bobby Gerald, Bobby Davis, Jerry Michelle, Michael Baker, Frank Hart, Ralph Atkinson, Ronald Atkinson, Fraizer Walpoh, and John Finny also be granted.

The plaintiff filed an objection to the Report. In particular, the plaintiff objects only to a United States Magistrate Judge conducting any proceeding in this action.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted). In light of this standard, the Court has reviewed, *de novo*, the Report and the objections thereto. While it is unfortunate the Plaintiff's truck and trailer were towed, the Court accepts the Report in its entirety.

Moreover, it is well settled law within the Fourth Circuit that, pursuant to 28 U.S.C. §636(b)(1)(B), "a district court may, without the parties' consent, designate a magistrate to consider a dispositive motion." Camby v. Davis, 718 F.2d 198 (1983). However, "[a]fter considering such a motion, a magistrate must submit proposed findings of fact and

recommendation for the disposition, by a judge of the court..." Id. This was exactly the procedure followed in this case.

A *de novo* review of the record indicates that the Report accurately summarizes this case and the applicable law. For the reasons articulated by the Magistrate Judge, it is **ORDERED** that Defendants Clyde James and James Equipment Wrecker Service's motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is **GRANTED** and that Defendants City of Marion, Bobby Gerald, Bobby Davis, Jerry Michelle, Michael Baker, Frank Hart, Ralph Atkinson, Fraizer Walpoh, and John Finny's motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure is **GRANTED**.

**IT IS SO ORDERED.**

s/ Terry L. Wooten  
Terry L. Wooten  
United States District Court Judge

September 21, 2005  
Florence, South Carolina